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# **Family Education, State Intervention and Political Liberalism**

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**JAN STEUTEL and BEN SPIECKER**

*This paper tries, from the perspective of political liberalism, to answer the question whether parents can fail in the moral upbringing of their children to the extent that the state has the right to intervene or to override their legal authority over their children. It is argued that state intervention must meet the liberal criterion of justificatory neutrality, and, on the basis of a discussion of the notion of 'reasonable citizens', that only serious parental failure to inculcate basic rules can justify judicial intervention in the family that meets this criterion. It is concluded that political liberalism burdens the state with incompatible demands.*

## **INTRODUCTION: PRESENTING THE QUESTION**

Article 245 of the first book of the Dutch Civil Code explicitly states that parents have authority over their under age children. Apparently the right of parents to exercise authority over their children is considered so important in Dutch society that it is laid down in a legal provision. Yet it is definitely not regarded as an absolute right, nor as an indefeasible one. For the same Code offers the court the possibility of restricting parental authority and, more drastically, of depriving parents of the legal custody of their children. For example, article 254 says that a magistrate of a juvenile court can place the child under supervision of a family guardianship agency. If such measures are taken, parental authority is subordinated to the authority of the agency, which implies that the right of parents to exercise authority over their children is not regarded as absolute but as something that can be overridden. Moreover, both article 266 and 269 state that the court may even deprive parents of their authority under certain circumstances. Such legal provisions show that under Dutch law the right of parents to exercise authority over their children is not taken as indefeasible but as something that can be nullified or taken away.

The Civil Code mentions several conditions which could make the indicated forms of judicial intervention legitimate: for example, if parents abuse their power, if the child's health is seriously threatened, if

parents are sentenced for certain types of crime, or if they are incapable of performing their duty to raise and care for their children. In addition to these rather obvious grounds, the Code explicitly mentions reasons for intervention that may at first sight seem somewhat startling. Article 254 says that the court may place the child under supervision of a guardianship agency if the child's 'moral interests' are seriously threatened. And article 241 lays down that the public prosecutor may put the child under the authority of the Child Welfare Council if such a measure is urgently required to prevent the child's 'moral decline'. What apparently is stated in these articles is that serious threats to the child's *moral development* can generate good reasons for restricting or nullifying parental authority. Axiomatically this danger of stunting development must be due to parental failure. One way or another, they have to be at least causally responsible for the fact that the child's moral growth is at risk. In other words, the law offers the judge the possibility of intervening in the family if the parents seriously fail in the domain of *moral education*.

In this paper we are not interested in a historical account of the social conditions or political beliefs that constitute the background for introducing the indicated legal regulations. Nor do we want to answer the empirical question whether or not endangering the moral growth of the child actually functions as a justifying reason for judicial intervention in the family. Our question is an *ethical* one: can the legal right to this particular form of intervention be morally justified? Is it possible for the moral upbringing of the child to fail to such an extent that the state has indeed the moral right to restrict parental authority or even to deprive them of their legal custody?

### POLITICAL LIBERALISM: SPECIFYING THE QUESTION

Obviously the answer to our question will depend on the perspective taken. For example, an answer from a utilitarian point of view will be different from one inspired by Aristotelian perfectionism. Even more obvious is that a critical evaluation of the different perspectives and their respective answers is far beyond the scope of this contribution. We will restrict ourselves to an exploration on the basis of one perspective only, namely, that of so-called *political liberalism*.<sup>1</sup> Although the choice for this point of view could rightly be considered one-sided, it can hardly be dismissed as an arbitrary one. The typical structure and legitimation of western constitutional democracies, including the Netherlands, are decisively inspired by philosophical views that are constitutive of political liberalism. Therefore, answering our question in terms of these views is tantamount to testing the legal provisions of the state against its own foundations. We assess forms of state intervention by appealing to principles that the state itself is supposed to maintain and observe.

By taking political liberalism as a starting-point, our question can be made more specific along two different lines. First, the reasons for judicial intervention we are looking for should refer to aspects of moral

education that go by the name of *civic* education. Characteristic of every developed society is a social order which is constituted by a public morality, a framework of rights and corresponding duties every citizen is supposed to comply with. And just like in other developed societies, the state in a liberal democracy is expected to make sure that its citizens act according to the public morality, both by enforcing a system of sanctions and by creating conditions for proper civic education. But suppose that in certain families the growth of the child into a true liberal citizen is wilfully thwarted or seriously impeded in another way, is the state then allowed to intervene in such families? Could *these* failures in the domain of moral upbringing be a good reason for giving the legal institutions of the liberal state the right to confine or nullify the authority of parents over their children?

Second, state intervention in the family should meet the liberal principle of so-called *justificatory neutrality*.<sup>2</sup> Typical of modern open societies is that citizens are committed to a wide range of different and often conflicting conceptions of the good life. Reasonable citizens have diverging views about how it is best to live, about what makes life worth living, or about which things in life are important, valuable or worthwhile. According to political liberalism, the government is not allowed to base its policies and legislation on a conception of the good life that is controversial among its citizens. On the contrary, the state should justify its laws and political arrangements by appealing to grounds or values that are neutral with respect to controversial views of the good.<sup>3</sup>

In the history of liberal thought the principle of neutrality is defended in different ways (cf. Sher, 1997). For example, some liberal philosophers have supported neutrality on the basis of the sceptical view that there is no such thing as knowledge in the domain of conceptions of the good life. No one, not even the state, can know, or know well enough, which ways of living are actually good. Moreover, others argue that only a neutral state can do justice to the supreme value of individual autonomy. Any non-neutral state would prevent its citizens arranging their lives according to a vision of the good which they have freely chosen on the basis of critical reflection. However, characteristic of political liberalism is that these defences of the principle of neutrality are rejected. One of its central claims is that state neutrality should be justified differently, namely, in terms of what is called the liberal principle of *political legitimacy*. According to this principle, a political order which is enforced by the state is only morally legitimate if it can be justified to the people who have to live under it. Given the fact that citizens in modern societies are committed to different and opposing conceptions of the good life, the liberal idea of political legitimacy requires that state policies and legislation meet the criterion of neutrality. For if the state were to base its decisions on a controversial conception of the good, its justification would appeal to the values that many reasonable citizens would not be able to acknowledge as having moral weight.<sup>4</sup>

So we see in which ways the perspective of political liberalism forces us to specify our central question. According to this view, the state has both the right and responsibility to make sure that children will grow into citizens that are able and willing to observe and maintain the liberal public morality. With reference to that, our question is whether serious resistance of parents against this form of civic education can make judicial intervention in their family morally legitimate. Moreover, political liberalism requires that state policy can be justified in terms of values that all reasonable citizens are able to accept, regardless of their particular conception of the good. This leads to the question whether judicial intervention in the family that is based on educational considerations can ever satisfy this criterion of political legitimacy. If we combine both elements, our central question can be formulated as follows: *is the state, judged by the principle of justificatory neutrality, morally entitled to restrict or nullify the right of parents to exercise authority over their under-age children, if they seriously impede their growth into good liberal citizens?*

## BASIC RIGHTS

As we all know, modern philosophers who consider themselves to be liberal are defending different and often incompatible views about how exactly the liberal state should be arranged. Among other things, they disagree about the nature of the framework of rights and duties that is supposed to structure the relationship between the government and its citizens, as well as the relations between citizens themselves. Nonetheless, all these philosophers, and in particular those who endorse political liberalism, seem to hold the view that at least one principle should be a necessary part of every public morality that is rightly called 'liberal' (cf. Buchanan, 1989, p. 854). The principle we have in mind is the first of the two principles of justice articulated and defended by John Rawls. This principle, which from now on we shall call the *liberal principle of justice*, is summarised by Rawls in the following way: 'Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all' (Rawls, 1993, p. 5). The main tenor of this principle is to protect the freedom of all citizens by assigning every citizen an optimal package of the same basic rights. This package comprises the well-known civic liberties (like freedom of thought and liberty of conscience), the political basic rights (like the right to vote and the right to run for public office), and also the fundamental rights covered by the rule of law (like the right not to be arbitrarily arrested or the right to impartial treatment in court).

All these typical liberal basic rights are embedded in different articles of our (Dutch) constitution. Nevertheless, it can hardly be denied that in some families in our society values are transmitted that conflict with the liberal principle of justice. We have in mind particularly those families in which an ultra-orthodox or a fundamentalist religion is imparted to

children. In circles in which such a religious conception of the good life dominates, it is not unusual that the separation between state and church or mosque is rejected, which is contrary to the principles of freedom of religion or liberty of conscience. And in these circles women are sometimes denied certain political rights, which is incompatible with the principle that every citizen has the same basic rights. For example, some years ago the general committee of the Dutch Reformed Political Party proposed a motion in which women were denied membership of their party. According to the committee, party membership has to be considered a violation of biblical texts. They claim that the Bible says that the 'office of ruler' is reserved for men only. In a private meeting of the party, in September 1993, the motion was carried.<sup>5</sup>

Parents who are transmitting such religious-moral doctrines offer their children a moral education that clearly conflicts with basic liberal rights. Therefore, they hamper the development of their children into liberal citizens, into persons who are intrinsically committed to the liberal framework of rights and duties. And our question is: can such a form of *illiberal* education be regarded as a good reason for giving the state the right to intervene by judicial means in the family? Is it morally acceptable to restrict or supersede the authority of such parents over their children?

From the perspective of political liberalism, state intervention has to meet the principle of justificatory neutrality. Consequently, an affirmative answer to our question presupposes that at least the basic liberal rights can be justified in terms of values every reasonable citizen can freely agree with, whatever his or her conception of the good life. According to Rawls, in modern democratic societies there is indeed such a neutral or common ground. Implicit in the public political culture of such societies is the fundamental intuitive idea 'of a society as a fair system of social cooperation between free and equal persons' (Rawls, 1993, p. 9). And his conception of justice as fairness, including both principles of justice, is presented as an articulation and systematisation of this basic intuition. The principles of justice are justified by appealing to the procedure of the original position; and the structural aspects of the original position (the parties are symmetrically situated, they are placed behind a veil of ignorance, etc.) are justified in terms of the fundamental idea of free and equal citizens viewed as fully cooperating members of society.

We think Rawls is quite right in stating that in modern democratic societies the intuitions mentioned are widely shared, however implicitly. Consequently, there are good reasons to believe that the liberal principle of justice can be justified in terms of values that are acceptable to the greater part of the citizens. But not to *all* reasonable citizens, for in certain religious circles people do not share the fundamental idea referred to. The aforementioned examples of illiberal education show that such groups especially lack the normative-intuitive conception of citizens as free and equal persons. Consequently, the members of these circles are not able to accept the values of freedom and equality that

form the basis of the justification of the liberal principle of justice. Of course, the state could force such groups to renounce the spreading and transmission of their illiberal doctrines with a number of sanctions, for instance by the threat of judicial intervention. But such a policy would not satisfy the liberal demand for justificatory neutrality. An essential aspect of liberal morality would be imposed by illiberal means, that is, by means that the same morality considers to be morally reprehensible.

### REASONABLE CITIZENS (I)

Rawls's response to our argument would probably be something like this: 'Indeed, the state must be capable of justifying the enforcement of the basic principles of social cooperation in terms of values citizens can freely agree with. However, such a neutral justification is only required towards citizens who can be considered *reasonable*. And groups like ultra-orthodox Christians and fundamentalist Muslims surely do not meet this qualification. So there is nothing wrong with justifying the enforcement of liberal basic rights in terms of fundamental intuitions these groups do not share. Because the principle of neutrality requires that an appeal is made to values that can be endorsed by reasonable citizens only, the liberal criterion of political legitimacy is satisfied.'

Our expectation that Rawls would respond in such a manner may be deduced from his account of the virtue of reasonableness. According to Rawls, being reasonable implies having 'the willingness to recognize the burdens of judgment and to accept their consequences' (Rawls, 1993, p. 49).<sup>6</sup> In order to explain what he means by this, he introduces a distinction between two fundamental types of disagreement. Some disagreements, he says, are *unreasonable* because they are rooted in factors like prejudice and bias, blindness and ignorance, perversities and irrationality, or in narrow self- or group-interests. There are, however, also disagreements that are perfectly *reasonable*. These are rooted in aspects of the human condition which he calls 'the burdens of judgment'. For example, relevant evidence is often conflicting and complex, and thus difficult to assess; our concepts, in particular our moral and political ones, are vague and indeterminate, which creates the possibility of different interpretations; evaluating evidence and weighing values are influenced by background life-experiences, which are likely to be rather different from person to person in complex modern societies. Taken together, such factors will ensure that conscientious persons with full powers of reason will often reach radically different conclusions, even after free and open discussion (Rawls, 1993, pp. 54–66).

On the basis of this distinction, Rawls argues that citizens who have the virtue of reasonableness will recognise the burdens of judgement and, consequently, will endorse the view that different and even incompatible conceptions of the good life can be fully reasonable. Moreover, because reasonable citizens acknowledge that fellow citizens can adhere to different ideals of the good in a reasonable way, they will hold the view that it is unreasonable to use political power to repress

such reasonable conceptions. And this rejection of political repression of ideals of the good that are not unreasonable implies that reasonable citizens are committed to some kind of tolerance, namely 'some form of liberty of conscience and freedom of thought' (Rawls, 1993, p. 61). Isn't this exactly what fundamentalists and ultra-orthodox believers are lacking? Because these advocates of theocracy would repress or at least actively oppose certain reasonable ideals of the good if they were in power, they should be regarded as unreasonable. That is why it is not illegitimate to found measures of the state to protect the liberal order of society, including judicial intervention in the family, on values that are controversial in such circles.

We think, however, that William Galston is quite right when he observes that Rawls 'packs far too much into the idea of the "reasonable"' (Galston, 1995, p. 519). According to Rawls, reasonable citizens are opposed to any state repression of reasonable conceptions of the good life and, therefore, are unwilling to support any public morality that is essentially informed by their own controversial ideals of the good. By claiming this, reasonable citizens are actually considered to be liberal citizens, or at any rate citizens who are committed to the essentials of the liberal principle of justice. And this incorporation of liberal views into the idea of the reasonable is, in our view, hardly acceptable.

First, Rawls's account of the reasonable makes his argument entirely circular. Why is the arrangement of society according to basic liberal rights morally legitimate? Because, Rawls argues, such a public morality is justifiable to reasonable citizens. But why is it that such a liberal framework can be justified to reasonable citizens? Because, according to Rawls, reasonable citizens will regard ordering society according to liberal rights as morally legitimate.<sup>7</sup>

Second, the liberal principle of political legitimacy requires that the state should justify its public morality. However, Rawls's conception of the reasonable citizen makes a justification of basic liberal rights either pointless or unnecessary. Different from a proof, a justification is directed at those who disagree with us to show them that they should join us in believing what we do. But then what sense does it make to justify liberal basic rights to reasonable citizens? By being reasonable, such citizens are already supporting these rights, or at least 'most of these liberties' (Rawls, 1993, p. 64). Towards all other citizens, that is, towards those who have difficulties with endorsing the primacy of liberal rights, such a justification would be clearly more than preaching to the converted. But now the justification, though having a point, is deemed unnecessary, because such citizens are disqualified as being unreasonable.

Third, Rawls's explanation of the reasonable citizen seems hardly compatible with the spirit of the principle of legitimacy. According to this principle, any public morality, or at least its central elements, must be capable of being justified on the basis of grounds citizens can freely accept. However, Rawls's restriction of the scope of the principle by excluding citizens with illiberal views can hardly be regarded as



legitimate in terms of the principle itself. For his central reason for restricting the principle's range of application, namely that the citizens who are excluded are unreasonable, will definitely not be a ground that those citizens are able to freely agree with.

Fourth, according to Rawls, reasonable disagreement on matters concerning the good life is rooted in the burdens of judgements. It can hardly be denied, however, that exactly the same factors may also be the source of reasonable disagreement about matters of public morality, including the question whether or not basic institutions of society should be arranged according to liberal rights. And because Rawls incorporates a commitment to such rights into the notion of reasonable citizens, there may be, rooted in the same factors, reasonable disagreement about this notion too. But if citizens, because of the burdens of judgement, can reasonably disagree with Rawls's conception of the reasonable citizen, how, then, could he condemn them for being unreasonable?

What could be a more appropriate interpretation of the notion of reasonable citizens in the present context? Just like Rawls, Charles Larmore defends the principle of justificatory neutrality on the basis of the liberal ideal of political legitimacy. But, differently from Rawls, he does not incorporate a commitment to liberal rights into the notion of a reasonable citizen. What he means by 'reasonableness' is 'thinking and conversing in good faith and applying, as best as one can, the general capacities of reason which belong to every domain of enquiry' (Larmore, 1990, p.340: 1994, p.74). Though he does not give any further explanation of his notion of reasonableness, his general definition, if interpreted properly, seems precisely to cover the capacities and dispositions that may be expected of reasonable citizens.

First of all, Larmore's definition refers to the general *powers of thought and judgement*. Sometimes human beings are said to be reasonable just because they have these powers of reason. In this sense a reasonable person is someone who is capable of drawing inferences, assessing arguments, weighing evidence, justifying beliefs and balancing competing considerations. Here the term 'reasonable' is used in a descriptive or classifying way, as opposed to 'nonreasonable'. It goes without saying that citizens must be reasonable in this particular sense. To human beings who are lacking the powers of reason, like infants, severely demented people or the seriously mentally disturbed, every justification is in fact pointless. However, Larmore's definition of 'reasonableness' covers much more than just the general capacities of reason. It also refers to certain types of *dispositions*, in particular to the willingness to apply, as best one can, the powers of reason, and, perhaps even more important, to thinking and judging in good faith. Here the term 'reasonable' is used in a normative way, in opposition to 'unreasonable'. It is obvious that citizens should be reasonable in this sense too. It would simply be unreasonable to demand of the state the capability of justifying its policies and legislation to citizens who are unwilling to exercise their general powers of reason in a sincere and conscientious way.

In short, then, reasonable citizens should be regarded as persons who are able and disposed to assess, in good faith and as best as they can, the justifications offered for society's public morality. The principle of justificatory neutrality requires that political principles must be justifiable in terms of values that can be accepted by *such* citizens. It is true that ultra-orthodox Christians or fundamentalist Muslims are not reasonable in Rawls's sense. But we do not see why such citizens cannot be reasonable in the sense we explained on the basis of Larmore's definition. Towards these reasonable citizens a neutral justification of the liberal principle of justice seems to be impossible. Even if they are quite willing to evaluate Rawls's justification as best they can and in good faith, they are unable to accept it because they do not share the basic liberal intuitions. How, then, can illiberal forms of moral education be a legitimate reason for judicial intervention in their families?

### BASIC RULES

In typifying the liberal framework of rights and corresponding duties, liberal philosophers standardly refer to the liberal principle of justice, or at any rate to certain basic rights covered by the principle. Indeed, a liberal public morality without the liberal principle of justice is hardly conceivable. Sometimes, however, an interesting supplementary account of the liberal framework is offered. In such cases reference is made not just to liberal basic rights, but also to a particular group of concrete rules. According to John White, for example, the liberal-moral framework comprises 'prohibitions against murder, physical injury, stealing, breach of contract, lying . . . , as well, perhaps, as positive injunctions like that of helping those in distress' (White, 1990, p. 18).

In Richard Peters's publications on moral education, such rules are called *basic* rules. In his opinion, the general observance of these rules is essential to the continuance of any tolerable form of social life. These rules, Peters argues, are so important for anyone living in a society that they could be regarded almost as definitions of a society (Peters, 1966, pp. 173–5; 1981, pp. 43, 49–50, 65, 145, 158, 179). According to this characterization, basic rules are universal by nature, even though the interpretation and specification of these rules will vary considerably from society to society. In this respect basic rules differ from liberal basic rights. The liberal principle of justice is taken seriously in modern democratic societies only, whereas basic rules are considered important in every minimally tolerable society. In illiberal societies, too, it is forbidden to murder a fellow citizen, to inflict grievous bodily harm, to rob, to destroy property, to cheat, or to commit breach of contract. Without going into subtle distinctions we could formulate this point of difference as follows: liberal basic rights form an integral part of a *liberal* public morality only, whereas basic rules form an indispensable part of *every* public morality, including the liberal one.<sup>8</sup>

Given the pre-eminent importance of basic rules, it is not surprising that Peters strongly favours a type of moral education in which such

rules are firmly inculcated into the child. But however important the inculcation of basic rules may be, it is by no means imaginary that parents seriously fail in respect to this aspect of moral education. Sometimes, especially in cases of severe neglect, parents take no pains whatsoever to inculcate basic rules into their children, not even when the behaviour of their children is in flat contradiction to these rules. Or, more seriously, sometimes parents involve their children, directly or indirectly, in an underworld of violence, fraud, robbery and burglary. And our question is: are *these* deficiencies in the domain of moral upbringing a good reason for giving the state the right to restrict or over-rule the legal authority of parents over their children?

This question is by no means a purely theoretical one. In the Dutch Civil Code the fact that parents have committed a criminal offence with one of their children is explicitly mentioned as one of the reasons for depriving them of their parental authority (Art. 269). Moreover, Dutch criminologists have recently suggested that under certain circumstances judicial intervention in the family may be a proper measure to prevent persistent juvenile delinquency. They argue that empirical research shows that various forms of parental failure or misconduct, like absence of supervision or inconsistent and violent discipline, are factors that highly contribute to the development of criminal behaviour. According to them, the presence of a cumulation of such structural risk factors, if confirmed by additional clinical information about the family, is a good reason for persuading the parents to participate in courses designed to improve their behaviour. And if parents, in spite of all that, persistently refuse to take part in such training programmes, *forcing* them to do so is considered a proper option (Junger-Tas, 1998).

We think that from the perspective of political liberalism our question can be answered in the affirmative, in particular because state enforcement of basic rules satisfies the liberal principle of political legitimacy. Contrary to liberal basic rights, these rules can indeed be justified to *all* reasonable citizens, irrespective of their conceptions of the good life. Peters has also defended this possibility, basing himself on a publication of H.L.A. Hart (1961, ch. ix). According to Hart, the point of basic rules can be understood against the background of certain universal features of human nature and the world in which humankind is living. It is, he says, a commonplace that human beings normally have the will to survive. But in order to survive, and given certain other universal features of human existence, a minimum package of social rules is required. Such a feature is for example human vulnerability, on the basis of which the prohibition on manslaughter and physical violence can be explained. Another fact is that human beings need relatively scarce goods, like food, clothing and shelter, which makes the prohibitions on theft, robbery and destruction understandable. And another datum is that human beings have to cooperate, and therefore have to trust each other to a certain extent, on grounds of which certain rules regarding promises and contracts become intelligible. In short,

given such universal features of human existence, the general observance of basic rules is necessary for survival.

If this argument holds true, a justification of basic rules in which an appeal is made to neutral values only is indeed possible. Of course, in every society these rules are elaborated and refined in different ways, often resulting in complex patterns of legal rights and duties with a number of supplementary functions. But if the heart of such patterns is finally based on the will to survive or, as Peters would claim more moderately, on the will to make life minimally tolerable, every citizen will profit from the fact that such a system of rules is observed and maintained. As we have seen, the justification of liberal basic rights in terms of fundamental liberal intuitions does not meet the principle of justificatory neutrality. Since not all reasonable citizens are able to endorse the values of freedom and equality, a reasonable consensus concerning such rights is essentially limited. However, the indicated justification of basic rules does not appeal to liberal intuitions but to *self-interest* only. And because we may assume that every reasonable citizen will attach some value to his or her own interests, a reasonable consensus regarding such rules is in principle *unlimited*.

What we mean by justifying basic rules in terms of self-interest can also be elucidated by referring to the social contract as a model of justification. Imagine rational persons concluding a contract on the principles of the future organisation of their society by mutual deliberation. They will opt for the general observance of basic rules solely on the basis of self-interest. Contrary to the original position of Rawls, the veil of ignorance is not required for such a reasonable agreement. For even persons who know that they will be powerful, strong and talented will realise that the general observance of basic rules will also serve their own interests. That's why the complex of basic rules is sometimes called a 'Hobbesian morality' (Brandt, 1979, pp. 204–5, 218–21).

## REASONABLE CITIZENS (II)

Someone who is well acquainted with the history of philosophy would probably raise the following objection to our argument: 'Your justification of basic rules does not do the work it is supposed to do. What *can* be justified purely on the basis of self-interest is that living in a society constrained by basic rules is preferable to living in a world in which such rules are not in force or widely violated. Because the general observance of basic rules is profitable to anyone, whatever his or her conception of the good life, only a madman would prefer the latter option. However, what your argument clearly does *not* demonstrate is that sticking to basic rules is always in our own best interests. Surely, the consequences of acting in compliance with those rules will often be beneficial to ourselves. But situations may arise in which we could profit from transgressing them. Take, for example, the so-called free-rider, whose way of life is a subject of long-standing and persistent philosophical concern (cf. Curren, 1999, pp. 73–9). Characteristic of

the free-rider is that he is quite ready to break the rules if he thinks that doing so will serve his own good. He is taking advantage of the intrinsic willingness of others to stick to the rules, while he himself is only motivated to observe them if doing so would be required for reasons of prudence. How, then, could you claim that giving priority to the constraints of basic rules is justifiable to all reasonable citizens in terms of self-interest only?

In our view, this objection rightly points out that we should be capable of justifying not just that living in a society ordered by basic rules is preferable to living in a world without such constraints, but also that each citizen should comply with basic rules, even if doing so would be detrimental to his or her own interests. Moreover, the objection also shows that our justification of basic rules in terms of self-interest will not convince the free-rider that he should follow them if reasons of prudence counsel a different course. The fact that the general observance of basic rules will benefit all of us, will not be taken by him as an overriding reason to observe them whenever they apply. But it would be wrong to deduce from all this that imposing basic rules by means of state power would not meet the liberal principle of political legitimacy. As already stated, this principle only requires that the state should be capable of justifying its policies and legislation to citizens who are reasonable. And free-riders are *not* reasonable because they are *unfair*.

However, with reference to reasonable citizens different interpretations of fairness could be distinguished. So we should make clear which interpretation is the relevant one when we are accusing the free-rider of being unfair. First, Rawls too explains the virtue of reasonableness in terms of fairness. Because reasonable citizens are willing to recognise the burdens of judgement and to accept their consequences, they will be fair in the sense of being committed to central components of the basic principle of justice ('justice as fairness'). We argued, however, that this account of reasonable citizens is itself unreasonable. Consequently, in claiming that free-riders are unreasonable because they are unfair, we are not using this term according to Rawls's interpretation. Second, our explanation of reasonableness on the basis of Larmore's definition suggests that citizens may be unfair in a different sense. Citizens who are not exercising their powers of reason in good faith, because, for example, they are entering discussions with ulterior motives, could be rightly accused of being unfair. Though it may be expected of reasonable citizens that they are fair in this particular respect, it is not the sense we have in mind in discussing the free-rider problem. Third, citizens could also be regarded as unfair if they are unwilling to bear a proper portion of the inevitable burdens of living in a society. It is this explanation which is the relevant one in connection with the problem of free-riding. Because the free-rider takes advantage of the willingness of his fellow citizens to accept the possible costs of living up to basic rules without being ready to do so himself, he is unfair in this particular sense. We think that such a citizen should be disqualified as being unreasonable. It would be absurd to demand that the state should be capable of justifying

its public morality to citizens who are parasitic on the good will of their fellow citizens.

If free-riders are excluded, our justification of basic rules in terms of self-interest will do the work it is supposed to do. Given the fact that reasonable citizens do not want to be profiteers, they will, if they realise that living in a society constrained by basic rules is highly beneficial to all of them, be fully prepared to observe these rules themselves, even if doing so will not serve their own good under certain circumstances. This implies that state enforcement of basic rules meets the liberal principle of political legitimacy. The state's requirement that everyone should observe those rules is justifiable to reasonable citizens by appealing to the neutral value of self-interest only. It goes without saying that such a social order will only persist if basic rules are imparted to the younger generation. Therefore, reasonable citizens will also support the right of the state to make sure that these rules are passed on, if necessary with the help of coercive measures. And these may include judicial intervention in the family, especially if parents are drawing their children into practices that are clearly in defiance of basic rules (cf. De Ruyter and Spiecker, 1994).

## **SUMMARY AND A DISTURBING CONCLUSION**

Is the state morally entitled to restrict or even nullify the right of parents to exercise authority over their children if they seriously impede their moral development? In this paper we have tried to answer this question from the perspective of political liberalism. This means, first, that our question should be restricted to a certain kind of civic education. According to political liberalism, civic education should promote the child's growth into a citizen who is willing and able to uphold and sustain the public order of the liberal society. This order, we argued, is at least partly constituted by the well-known liberal basic rights and so-called basic rules. Second, political liberalism claims that state intervention in the family on the basis of supposed parental failures in the domain of civic education should meet the principle of justificatory neutrality. This principle, which is regarded as a specification of the liberal ideal of political legitimacy, requires that the state should be capable of justifying its public morality in terms of values every reasonable citizen can freely agree with.

One of the problems we discussed is how exactly the elusive notion of the reasonable citizen should be understood. For different reasons, we dismissed Rawls's incorporation of basic liberal views into the idea of the reasonable. According to us, reasonable citizens are fair in two different respects: they are willing to exercise their powers of reason in good faith and as best they can, and they are disposed to accept a fair part of the costs which are involved in living under a social order that is highly profitable to everyone.

In our view, arranging society according to liberal basic rights and correlating duties cannot be neutrally justified to citizens who are

reasonable in the indicated sense. In the end, such a justification appeals to values that are involved in fundamental liberal intuitions. And some groups of reasonable citizens, in particular ultra-orthodox and fundamentalist believers who are not unreasonable, do not share those intuitions. Consequently, state intervention in their families by reason of the fact that illiberal moral doctrines are being inculcated will not meet the principle of political legitimacy. However, ordering society according to basic rules can indeed be neutrally justified, namely by appealing to the truly common ground of self-interest only. Given their willingness to exercise their powers of reason in good faith and as best they can, reasonable citizens will understand that the general observance of basic rules will be in the interest of every citizen. And because they do not want to be free-riders, they will sustain the claim that the state has the task to make sure all citizens, including themselves, will live up to those rules. Consequently, reasonable citizens will also accept the right of the state to see to it that basic rules are firmly inculcated in the younger generation, if necessary by restricting or over-ruling the right of parents to exercise authority over their children.

Our conclusion that only basic rules are justifiable in terms of values every reasonable citizen can freely agree with reveals a deep discrepancy in political liberalism. This philosophical view imposes demands on the state that are in fact incompatible. On the one hand, the state is assigned the right to make sure that citizens attune their doings and dealings to the liberal public morality. On the other hand, state policies and legislation, in particular enforcement of liberal public morality, should satisfy the liberal principle of political legitimacy. Insofar as liberal basic rights and corresponding duties are concerned, the state cannot come up to both expectations. If the state claims the right to enforce the liberal-moral framework, its policy cannot stand the test of the principle of justificatory neutrality; and if the state endorses the principle of justificatory neutrality, it cannot claim the right to enforce the liberal-moral framework.

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## NOTES

1. Political liberalism should be distinguished from so-called comprehensive liberalism. The latter type of liberalism justifies the liberal arrangement of society in terms of a comprehensive conception of the good life (e.g. Kant's doctrine of autonomy, Mill's ideal of individuality or Dewey's secular humanism). Political liberalism, however, is presented as a 'free-standing view', that is, as being independent of any comprehensive doctrine and, consequently, as being applicable to the basic structure of society only (cf. Rawls, 1993, pp. 11–15, 199–200; Larmore, 1990; Macedo, 1995a, pp. 473–6).
2. It is important not to confuse justificatory neutrality (sometimes also called procedural neutrality or neutrality of grounds) with neutrality of *aim* or neutrality of *outcome* (or effect) (cf. Arneson,

- 1990, pp.217–9). Though adherents of political liberalism deny the possibility of outcome neutrality, they standardly support both neutrality of aim and justificatory neutrality. Interesting (but not always approving) accounts of justificatory neutrality are given by Dworkin (1985, pp. 191ff), Larmore (1987, pp. 40–68), De Marneffe (1990), Galston (1991, Part II), Rawls (1993, pp. 9–10, 100–1, 192, 217), Macedo (1995b) and Sher (1997, ch. 2).
3. According to Rawls, the principle of justificatory neutrality excludes as a basis of a theory of justice not only controversial conceptions of the good life, but also any comprehensive religious, philosophical or moral doctrine. Though conceptions of the good and comprehensive doctrines are not quite the same, Rawls apparently sees them as close relatives, in particular because he explains a conception of the good life in terms of final ends and attachments that are interpreted in the light of some comprehensive doctrine (Rawls, 1993, pp. 19–20, 74). Given this intrinsic relationship, and not to make matters unnecessarily complicated, we shall simply speak of conceptions of the good life.
  4. The principle of political legitimacy itself is often justified in terms of the principle of *respect for persons*. Waldron, for example, argues that respect for the capacity of human agents to determine for themselves how they will restrain their conduct in order to live in community with others requires ‘that the social order should in principle be capable of explaining itself at the tribunal of each person’s understanding’ (Waldron, 1993, p. 61; see also Larmore, 1990, pp. 348–9).
  5. In a recent meeting of the Dutch Reformed Political Party it was decided to admit women as ‘associate members’. Though women are now allowed to participate in party meetings, fulfilling a representative function on behalf of the party (e.g. being a Member of Parliament) is still out of the question.
  6. It should be noted that Rawls regards the indicated willingness as one basic aspect of the virtue of reasonableness only. The other basic aspect he discerns is ‘the willingness to propose and honor fair terms of cooperation’ (Rawls, 1993, p. 49). However, we will leave this aspect outside of consideration. We think that discussing the first aspect is much more interesting, because the idea of the burdens of judgement is in itself not specifically liberal, whereas the second aspect is conceptualised in terms of basic liberal ideas of society and the person from the very start (cf. Sher, 1997, pp. 89–90). It will be clear that our objections to Rawls’s interpretation of the first aspect will be *a fortiori* applicable to his explanation of the second aspect.
  7. For a similar objection to Rawls’s conception of the reasonable citizen, see Mulhall (1998, p. 170). Perhaps to avoid the indicated circularity, Larmore explicitly states that basic liberal views are not contained in his notion of reasonableness (Larmore, 1990, p. 347; see also De Marneffe, 1990, p. 256).
  8. Rawls, too, regards basic rules as belonging to the liberal–moral framework, which is shown both in his references to Hart (Rawls, 1987, p. 19; 1993, p. 109) and in the distinction he makes between the basic structure on the one hand, and the rules applying directly to the transactions between individuals and associations on the other (Rawls, 1993, pp. 268–9, 284).

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